

# **EXHIBIT H**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

**NINGBO YONGJIA AIDUO  
AUTO PARTS MANU CO., LTD.,**

Plaintiff,

v.

**THE INDIVIDUALS, PARTNERSHIPS  
AND UNINCORPORATED  
ASSOCIATIONS IDENTIFIED ON  
SCHEDULE “A”, including**

**WAXMAN SALES, LLC, a Texas limited  
liability company,**

Defendants.

**Case No.: 1:22-cv-24270-DPG**

**DECLARATION OF ADAM WAXMAN**

Adam Waxman declares and states as follows:

1. I am the President and founder of Waxman Sales, LLC (“Waxman Sales”). I founded Waxman Sales in 2008.
2. Waxman Sales sources, develops and sells an extensive array of high quality consumer products for the home, garden, automobile, and garage. Many of these products may be viewed on Waxman Sales’ public-facing website at <https://www.birdrockhome.com/>.
3. Waxman Sales does business on Amazon.com and elsewhere under the name “BirdRock Home.” Waxman Sales operates several storefronts on Amazon.com, including storefronts called “BIRDROCK HOME Store” and “Snow MOOver Store.”

**Sales on Amazon.com**

9. In 2022, Waxman Sales sold approximately 939 different consumer items on Amazon.com, including several different snow brush products.

10. Since around October of 2017, Waxman Sales has been selling one particular snow brush on Amazon.com entitled “Snow Brush with Detachable Ice Scraper for Car | 11’ Wide Squeegee & Bristle Head | Size: Car & SUV | Lightweight Aluminum Body with Ergonomic Grip | Windshield Paint Safe.” This snow brush has ASIN **B076PVN38H**, where “ASIN” stands for Amazon Standard Identification Number. Each product sold on Amazon.com has a unique ASIN. A picture of this particular snow brush is shown below:

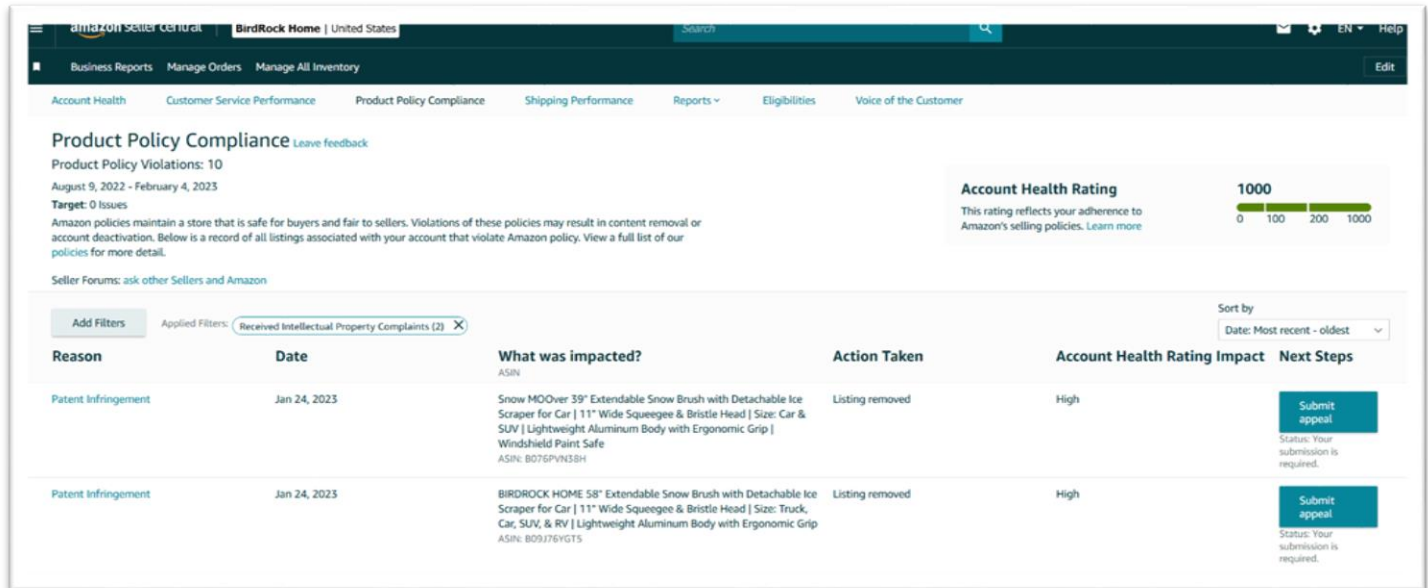


The listing for this Waxman Sales product on Amazon.com is found at:

<https://www.amazon.com/Snow-Moover-Extendable-Squeegee-Scraper/dp/B076PVN38H>.

11. On or shortly after January 24, 2023, we learned that a third party had apparently submitted patent infringement complaints to Amazon.com against two of Waxman Sales’ snow

brushes: the above-mentioned ASIN B076PVN38H, and in addition, a snow brush with ASIN B09J76YGT5.

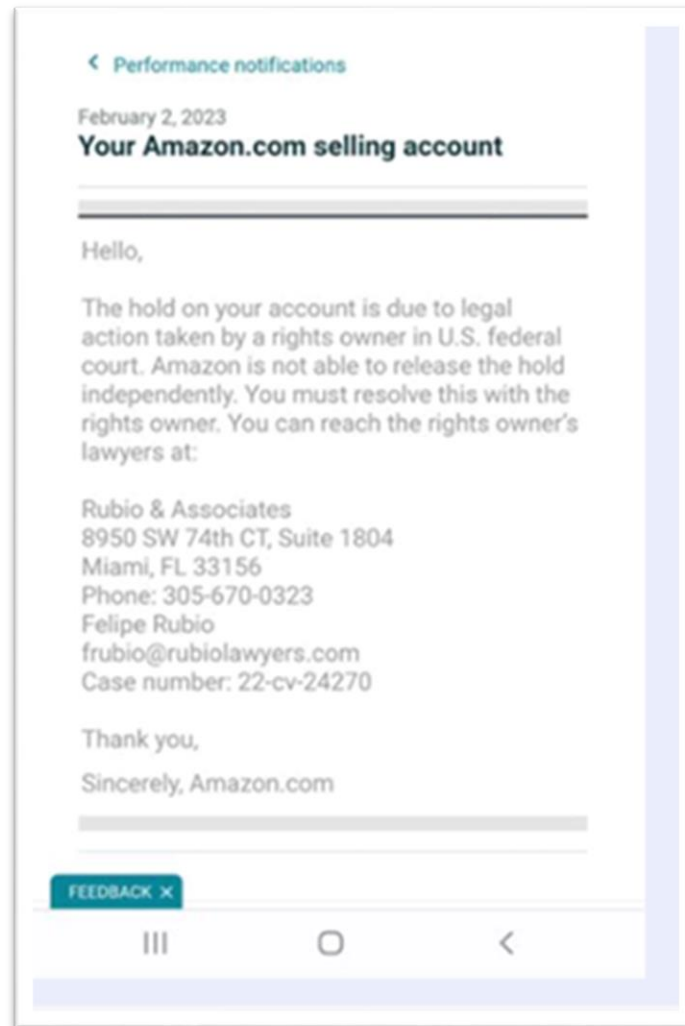


12. Above is a screen shot from Waxman Sales' portal with Amazon.com, showing that Amazon.com had removed the listing for these two items. In this case, Amazon.com did not provide any contact information, or any other information, regarding either who had submitted a complaint, or the reason basis for any complaint to have been filed.

13. On Friday, February 3, 2023, I learned from Amazon.com that there had been a lawsuit filed against my company, and that Amazon.com was withholding a periodic payment of \$785,115.03 by reason of this lawsuit. Normally, this payment would be received and available for use by Waxman Sales by Tuesday, February 7, 2023.

14. Normally, Amazon.com pays Waxman Sales every two weeks, providing a statement with the amount of money that will be transferred on a Friday, and then making a payment that is received by Waxman Sales on the following Tuesday. Waxman Sales is highly reliant on this payment schedule in order to fund its operations.

15. Below is a screenshot of the message that I received from Amazon.com, providing the case number for this case, and stating that the only way to resolve this matter was to contact the rights owners' lawyers at the Rubio & Associated law firm"



14. On Friday, February 3, 2023, I called the Rubio law firm at number provided, but I did not ever receive a response. That same day, at 11:32 am, I sent the email attached as Exhibit 1 to Felipe Rubio at the Rubio law firm. I did not ever receive a response.

15. Later that same day, I contacted Waxman Sales' regular intellectual property outside counsel, Stewart Mesher at the law firm of K&L Gates, in order to investigate the lawsuit identified by Amazon.com, and to attempt to secure prompt return of the \$785,115 that

Amazon.com was withholding. In light of the magnitude of the funds that Amazon.com was withholding and its threat to the financial well-being of Waxman Sales, I believe that it was necessary to retain outside counsel.

16. On or about Tuesday, February 7, 2023, I learned from Waxman Sales' portal with Amazon.com that Amazon.com was no longer withholding the previously mentioned \$785,115.03 in funds. Unfortunately, however, at that point, Waxman Sales' portal with Amazon.com indicated that the previously withheld \$785,115.03 funds had been apparently been moved to the next billing cycle by Amazon.com, such that these funds will not be sent to Waxman Sales and available for use until Tuesday, February 21, 2023.

17. This delay would have caused extreme financial hardship to Waxman Sales. Accordingly, various persons within Waxman Sales, including Controller Kendall Raisbeck and myself, continued our efforts to get these funds more quickly released to Waxman Sales.

18. During the afternoon of Thursday, February 9, 2023, I learned that Amazon.com had initiated payment to Waxman Sales.

### **Lost Sales and Lost Profits:**

19. Before the patent infringement submission was sent to Amazon (around January 24, 2023), with respect to the two ASIN snow brush items in question (*i.e.*, B076PVN38H - <https://www.amazon.com/dp/B076PVN38H> & B09J76YGT5-<https://www.amazon.com/dp/B09J76YGT5>), Waxman Sales averaged about 142 units per day.

20. Sales volume then dropped to zero for about 14 days (until around February 7, 2023). This translates to lost revenue of about \$71,568 and *lost profits of about* \$13,884, based on a profit margin of about 19.4%.

21. Since February 7, 2023, sales have slowly begun to rise. As of today (March 7, 2023), sales daily sales are averaging only about 74 units per day. For the 28-day period from February 7th to March 7th, sales volume has averaged only about 74 units per day. This translates to lost sales volume of about 68 units, additional lost revenue of about \$56,834 and *lost profits of about \$11,025*. Sales momentum is likely permanently lost for the season.

22. In my view, the above calculations to approximate Waxman Sales' lost profits for the period from February 7, 2023 until today, March 8, 2023 (*i.e.*  $\$13,884 + \$11,025 = \$24,909$ ) greatly undercount Waxman Sales' true lost profits. This is because, for example, there have been huge snowstorms in the past few weeks, so demand has increased accordingly, perhaps by a factor of 4 to 5. Also, the two Waxman Sales' snow brush products have been placed much lower in Amazon's algorithms than they would have been, had there not been a TRO issued. In addition, Waxman Sales has been required to reduce its prices and spend more on advertising for these two items. For these reasons, it is my opinion that Waxman Sales' true lost profits for the period from February 7, 2023 until today, March 8, 2023 are *closer to about \$99,636 - \$ 124,545* (or 4 to 5 times the above-calculated approximation of \$24,909).

#### **Miscellaneous Damages to Waxman Sales:**

23. I estimate that in total, I personally spent about 35 hours dealing with issues caused by this lawsuit, including working with attorneys on various topics, communicating with various individuals at Amazon.com, and attempting to plan for the possibility that the frozen \$785,115.03 in funds might not be available for use by Waxman Sales for an extended time

period. This time could have better been spent on other tasks that would have been financially beneficial to Waxman Sales.

24. I estimate that the following additional individuals associated with Waxman Sales spent the following numbers of hours, valued as indicated below, dealing with various issues and tasks caused by this lawsuit:

- Kendall Raisbeck (Controller) \$80/hr \* 54 hours = \$4320  
Tasks – See Raisbeck Declaration
- Kyle Murphy (Account Manager) \$75/hr \* 32 hrs = \$2400  
Tasks – working with Amazon to diagnose issues with the account and providing information to Kendall Raisbeck about Amazon sales, traffic, etc.
- Dylan Grams (Account Manager) \$75/ hr \* 29 hrs = \$2175  
Tasks – working with Amazon for reinstatement and payment
- Mark Chuberka (Systems Administrator) \$80/hr \* 30 hrs = \$2400  
Tasks – providing IT support and data
- Adam Waxman (President): \$250/ hr \* 35 hrs = \$8750  
Tasks – See ¶ 23, above
- Other employees: \$60/hr \* 20 hrs = \$1200  
Tasks – providing information as requested by other team members
- Total: \$21,245

25. I am over the age of 18 and am competent to make this Declaration. I have personal knowledge of the matters stated herein.

I declare under penalty of perjury that the foregoing is true and correct.

Executed within the United States on March 8, 2023.



Adam Waxman



# EXHIBIT 1

**From:** [Adam Waxman](#)  
**To:** [Mesher, Stewart](#); [Pogorzelski, Henry M.](#)  
**Subject:** FW: Accused IP Infringement  
**Date:** Saturday, February 4, 2023 12:07:53 PM  
**Attachments:** [image001.png](#)

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**External Sender:**

Stewart/Henry,

Below is the email that I sent to Rubio.

Thanks,  
Adam

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**From:** Adam Waxman  
**Sent:** Friday, February 3, 2023 11:32 AM  
**To:** frubio@rubiolawyers.com  
**Subject:** Accused IP Infringement

Hello Mr. Rubio,

Amazon informed us that one of our items was accused of IP infringement and provided your contact information. The case number: 22-cv-24270.

Item: Snow Moover 39" Snow Brush  
ASIN: B076PVN38H

Will you kindly provide the details of the infringement?

Best Regards,

**Adam Waxman**



11612 Bee Cave Road #1-200

Austin, TX 78738

**Phone** 619 808 7800

**Email** [adam@birdrockbrands.com](mailto:adam@birdrockbrands.com)

**Web** [birdrockhome.com](http://birdrockhome.com)